

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DAVID L. SHAW, #689847

§

VS.

§

CIVIL ACTION NO. 6:17cv660

DIRECTOR, TDCJ-CID

§

ORDER OF DISMISSAL

Petitioner David L. Shaw, a former inmate within the Texas Department of Criminal Justice proceeding *pro se*, filed this federal petition for a writ of habeas corpus. The petition was referred to United States Magistrate Judge, the Honorable K. Nicole Mitchell, for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

On February 20, 2020, Judge Mitchell issued a Report, (Dkt. #31), recommending that Petitioner's habeas petition be dismissed without prejudice for Petitioner's failure to comply with an order of the Court and the failure to prosecute. A copy of this Report was sent to Petitioner at his last-known address with an acknowledgment card. The docket reflects that the Report was returned as "undeliverable" with a notation of "dis/RTS," (Dkt. #33). To date, objections to the Report have not been filed, and Petitioner has not communicated with the Court since October 2018.

Because objections to Judge Mitchell's Report have not been filed, Petitioner is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (holding that where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. #31), is **ADOPTED** as the opinion of the Court. Further, it is

ORDERED that Petitioner's federal habeas petition is **DISMISSED**, without prejudice, for Petitioner's failure to comply with an order of the Court and Petitioner's failure to prosecute. Petitioner is **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

SIGNED this the 19th day of March, 2020.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE